85-1102

NO.

Supreme Court, U.S.
FILED
DEC 24 1985
JOSEPH F. SPANIOL, JR.
CLERK

in the

Supreme Court

of the

United States

FRANK MANN,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

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QUESTION PRESENTED FOR REVIEW

WHETHER THE DISTRICT COURT ERRED IN NOT AFFORDING THE PETITIONER, A PRISONER PRESENTLY IN FEDERAL CUSTODY, A PRE-TRANSFER HEARING PRIOR TO HIS RETURN TO THE STATE OF VIRGINIA PURSUANT TO A DETAINER FILED UNDER THE INTERSTATE AGREEMENT ON DETAINERS AND IN SUMMARILY DENYING HIS PETITION WITHOUT SUCH HEARING?

LIST OF PARTIES

The caption of this cause lists all parties to this cause who are before this Court.

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OPINION BELOW

The opinion of the United States Court of Appeals, Eleventh Circuit, was entered on September 24, 1985. That opinion is set forth in Appendix A to this Petition. A timely filed motion for rehearing was denied on October 30, 1985. That opinion is set forth in Appendix B to this Petition.

JURISDICTION

This Petition for Certiorari was filed less than 60 days from the opinion of the lower court. The jurisdiction of this Court is invoked under 28 U.S.C., Rules 17 and 20, Supreme Court Rules. The Eleventh Circuit Court of Appeals, in this case, has rendered an opinion which is in conflict with the decision of this Court in *Cuyler v. Adams* 101 S.Ct. 703 (1981).

PROVISIONS INVOLVED

The pertinent portion of the Fifth Amendment to the United States Constitution is:

> No person shall . . . be deprived of life, liberty or property, without due process of law.

The pertinent portion of the Sixth Amendment to the United States Constitution is:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law. . .

STATEMENT OF THE CASE

The petitioner is presently a federal prisoner in the respondent's custody. The petitioner is serving a federal prison sentence upon a federal conviction based upon the same facts as the Virginia indictments which are the basis for the detainer lodged against the petitioner. The petitioner protested his transfer on the detainer to the warden of the prison camp. His request was denied without a hearing, with the following comment from the warden:

> You have also stated that you felt that there are legal problems in relation to this detainer. I have investigated this matter and have made the determination that any further challenge to this detainer is a judicial matter.

The petitioner filed a petition for writ of habeas corpus requesting a pre-transfer hearing on the validity of his detainer. A federal magistrate recommended that the petition be denied, and the district court adopted that recommendation without opinion.

The petitioner's conviction was affirmed on direct appeal to the Eleventh Circuit Court of Appeals. See, Appendix A.

The petitioner's timely petition for rehearing was denied. See, Appendix B.

REASONS FOR GRANTING THE WRIT

THE DISTRICT COURT ERRED IN NOT AFFORDING THE PETITIONER, A PRISONER PRESENTLY IN FEDERAL CUSTODY, A PRE-TRANSFER HEARING PRIOR TO HIS REMOVAL TO THE STATE OF VIRGINIA, PURSUANT TO A DETAINER FILED UNDER THE INTERSTATE AGREEMENT ON DETAINERS AND IN SUMMARILY DENYING HIS PETITION WITHOUT SUCH HEARING.

The Sixth Amendment to the United States Constitution provides that, in a criminal case, the accused shall be tried "in the state and district wherein the crime shall have been committed which district shall have been previously ascertained by law."

The petitioner, in the petition filed in district court, specifically contested the jurisdiction of the Virginia courts, specifically attacking the validity of the Virginia indictments upon which the detainer was based. Seeking administrative review, the warden termed his challenge to the detainer a "judicial matter." The petition has been denied both an administrative hearing and a judicial hearing. The courts say it is an administrative matter. The warden (administrator) says it is a judicial matter. The petitioner, in the middle, *gets no hearing whatsoever.*

The petitioner submits that it is a judicial matter and that, pursuant to this Court's decision in *Cuyler v. Adams*, 101 S.Ct. 703 (1981), he is entitled to a pre-transfer hearing.

In *Cuyler*, this Court found that the "primary purpose" of the Detainer Agreement was to protect prisoners against whom detainers are outstanding, as it held:

> The remedial purpose of the Agreement supports an interpretation that gives prisoners the right to a judicial hearing in which they can bring a limited challenge to the receiving state's custody request. In light of the purpose of the Detainer Agreement, as reflected in the structure of the Agreement, its language, and its legislative history, we conclude as a matter of federal law that prisoners transferred pursuant to the previsions of the Agreement are not required to forfeit any pre-existing rights they may have had under state or federal law to challenge their transfer to the receiving state. (P. 712).

Before going into federal custody, the petitioner had successfully fought his extradition to Virginia in the Florida state courts (*Mann v. Crawford*), 11th Judicial Circuit, State of Florida, Case No. 84-2349). Now, solely because he is in federal custody, he is being denied the access to the courts which he had enjoyed before being taken into federal custody, even though the respondent has stated that the petitioner's challenge is a "judicial matter".

The petitioner does not argue that every federal inmate with a detainer is entitled to a full-fledged pre-transfer hearing. Those inmates who can, however, raise colorable, arguable, supported legal claims for relief should be afforded a pre-transfer hearing at which

they may argue their position. The petitioner has such meritorious claims. The respondent has never denied that the petitioner has raised arguable claims.

The petitioner submits that to deny him a pre-transfer hearing, the right to which he had and had successfully exercised before being taken into federal custody, solely because he is now in federal custody is contrary to Florida law, contrary to the respondent's recommendation that the petitioner's challenge was a "judicial matter", and contrary to the dictates of *Cuyler, supra*, by which, the petitioner submits, this Court has afforded the right to a pre-transfer hearing to federal inmates against whom a detainer is lodged and who can present meritorious defenses to those detainers.

CONCLUSION

Based upon the above facts, arguments, and authorities, the petitioner respectfully requests this honorable Court to issue its most gracious Writ of Certiorari to review the instant opinion of the United States Court of Appeals for the Eleventh Circuit.

Respectfully submitted,

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1441 N.W. North River Drive
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was delivered by mail to the Office of the United States Attorney, SAMUEL A. ALTER, Assistant, 309 U.S. Courthouse, 100 N. Palafox, Pensacola, Florida 32501, this day of December, 1985.

_____

Appendix

APPENDIX A

Frankie MANN,
Petitioner-Appelant,

v.

WARDEN OF EGLIN AIR FORCE BASE,
Federal Penal Institution,
Respondent-Appellee.

No. 84-3888.

United States Court of Appeals,
Eleventh Circuit.

[Sept. 24, 1985.]

Federal prisoner sought habeas corpus after federal prison camp warden denied his challenge to Virginia detainers without a hearing. The United States District Court for the Northern District of Florida, Winston E. Arnow, J., denied relief and prisoner appealed. The Court of Appeals held that: (1) prisoner was a federal prisoner and thus not entitled to any judicial determination available to Florida inmates under Florida law; (2) Sixth Amendment did not entitle prisoner to a hearing; and (3) warden's review was adequate under the Interstate Agreement on Detainers.

Affirmed.

1. **Extradition and Detainers —53**

Federal prisoner being held at federal prison camp in Florida was not entitled to benefit of Florida statutes providing for judicial determination of propriety of transfer with respect to detainers filed by the State of Virginia. West's F.S.A. §941.10

2. **Extradition and Detainers —53**

Under the Interstate Agreement on Detainers Act, §2, Art. II(a), 18 U.S.C.A. App., the United States may be a sending "state" for purposes of determining inmate's right to challenge transfer to the receiving state.

See publication Words and Phrases for other judicial constructions and definitions.

3. **Extradition and Detainers —56**

Federal prisoner had no Sixth Amendment right to hearing before warden of federal prison camp to challenge detainers filed by State of Virginia. U.S.C.A. Const.Amend. 6.

4. **Extradition and Detainers —56**

Although federal prison camp warden's written order informing prisoner that he had investigated alleged legal problems with detainers filed against prisoner and had determined that any further challenge would be a judicial matter was somewhat peremptory, the Interstate Agreement on Detainers Act, §2, Art. II(a), 18 U.S.C.A. App., did not require more.

Appeal from the United States District Court for the Northern District of Florida,

Before FAY and JOHNSON, Circuit Judges, and HOFFMAN*, District Judge.

PER CURIAM:

Appellant Frankie Mann is serving a two year sentence in a federal prison camp at Florida's Eglin Air Force Base. In August 1984, the state of Virginia filed a detainer against Mann for two outstanding indictments. Mann protested his transfer on that detainer to the warden of the prison camp. His request was denied without a hearing, with the following comment from the warden:

> You have also stated that you felt there are legal problems in relation to this detainer. I have investigated this matter and have made the determination that any further challenge to this detainer is a judicial matter.

Appellant filed a *habeas* petition in the Northern District of Florida on September 24, 1984, claiming that he was entitled to a pre-transfer hearing on the validity of his detainer. A federal magistrate recommended that the petition be denied, and the district court adopted that recommendation without opinion. Mann then filed this appeal.

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*Honorable Walter E. Hoffman, U.S. District Judge for the Eastern District of Virginia, sitting by designation.

[1] Frankie Mann claims that he is entitled to a pre-transfer hearing under *Cuyler v. Adams*, 449 U.S. 433, 101 S.Ct. 703, 66 L.Ed.2d 641 (1981), and the Sixth Amendment to the United States Constitution. We disagree.

In *Cuyler*, the Supreme Court held "as a matter of federal law that prisoners transferred pursuant to the provisions of the [Interstate Agreement on Detainers] are not required to forfeit any pre-existing rights they may have under state or federal law to challenge their transfer to the receiving state." *Id.* at 450, 101 S.Ct. at 712. Those rights "include the procedural protections of the Extradition Act (in those states that have adopted it), as well as any other procedural protections that the sending State guarantees persons being extradited from within its borders." *Id.* at 448, 101 S.Ct. at 711-712.

[2] Frankie Mann claims that Florida is "the sending State" in his case since he is actually within its borders, and thus he argues that under *Cuyler* he should benefit from Florida Statute §941.10, which provides for a "judicial determination" of the propriety of his transfer. This Court is not so literal-minded. Mann is, in fact, a prisoner of the United States—and under the Interstate Agreement on Detainers, 18 U.S.C.A. App. §2, Article II(a) (1970), the United States may be a sending "state." Thus, Mann receives no procedural protection under Florida statutes or, indeed, under the Extradition Act since the United States has not adopted the latter. *See Wilson v. Fenton*, 684 F.2d 249, 252 (3rd Cir.1982); *Sorenson v. United States*, 539 F.Supp. 865, 866 (S.D.N.Y. 1982).

[3] Mann's claim that the Sixth Amendment to the United States Constitution offers him relief is similarly

unavailing. It stretches that amendment too far to read its requirement that a defendant be tried in the proper forum, "which district shall have been previously ascertained by law," U.S. Const. amend. VI, to mandate full-fledged pre-transfer hearings for all inmates with detainers.

[4] The only procedure by which Mann may challenge the facial validity of a detainer before his transfer appears to be by motion for review by the prison camp warden. The Detainer Agreement provides that:

> there shall be a period of thirty days after receipt by the appropriate authorities before the request be honored, within which period the Governor [by designation, the warden] of the sending State may disapprove the request for temporary custody or availability, either on his own motion or upon motion of the prisoner.

Detainer Agreement, *supra* at Art. IV(a) [annotation supplied]. Mann sought such review, and the warden of his camp would not disapprove the transfer. Although that official's written order was admittedly somewhat peremptory and confusing—and we would be more sanguine about less perfunctory findings on the prisoner's claims—we do not read the Detainer Act as *requiring* more.

Consequently, we AFFIRM the judgment of the court below.

APPENDIX B

[FILED OCT 30 1985]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH COURT

NO. 84-3888

FRANKIE MANN,
Petitioner-Appellant,

versus

WARDEN OF EGLIN AIR FORCE BASE,
FEDERAL PENAL INSTITUTION,
Respondent-Appellee.

Appeal from the United States District Court
for the Northern District of Florida

ON PETITION(S) FOR REHEARING

(OCT 30 1985)

BEFORE: FAY and JOHNSON, Circuit Judges, and HOFFMANN*, District Judge.

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*Honorable Walter E. Hoffman, U.S. District Judge for the Eastern District of Virginia, sitting by designation.

PER CURIAM:

The petition(s) for rehearing filed by Frankie Mann is DENIED.

ENTERED FOR THE COURT:

/s/ [Illegible]
United States Circuit Judge